

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order to Forfeit a Fine
of Terrance and Michelle Johnson

**FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on March 24, 2005, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The hearing record closed at the conclusion of the hearing on March 24, 2005; there were no additional submissions.

Laura Kirscher Strauss, Assistant Attorney General, 445 Minnesota Street, Suite 900, Saint Paul, MN 55101-2127, appeared on behalf of the Department of Human Services (the Department).

Terrance and Michelle Johnson, Vermillion River Camp, 7406 Ahlgren Road, Buyck, MN 55771-8456, appeared for themselves without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Did the Department properly order the Respondents to forfeit a fine in the amount of \$400 for failing to initiate background studies on two adults who lived in their home for a short period of time?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. American Indian Family and Children's Services (AIFCS) is a foster care licensing agency that is licensed by the Department. AIFCS in turn licenses foster homes in which American Indian children are placed.^[1]

2. Terrance and Michelle Johnson have adopted several American Indian children with fetal alcohol syndrome. In June 2003, while living in Forest Lake, Minnesota, they were in the process of finalizing the adoptions of three children. Because the children were placed in their home before the adoptions were final, the Johnsons had applied for and obtained a foster care license.^[2]

3. Several of the Johnsons' children are disabled and qualify for the services of a personal care attendant (PCA). The Johnsons typically hired PCAs through a personal care provider organization called Summit Health Care. The Johnsons were aware that anyone working as a PCA in their home had to have a background study performed.^[3] In the past, Summit Health Care has conducted the background studies for PCAs used by the Johnsons and has submitted them to AIFCS. AIFCS has accepted the background studies performed by Summit Health Care.^[4]

4. In early June 2003, Terrance Johnson's brother and the brother's long-term girlfriend, Leann Lyons, began staying at the Johnsons' home because the brother and Lyons were having financial difficulties. Laura Newton, the Johnson's licensing worker from AIFCS, saw Leann Lyons at the home and asked Terrance Johnson if she was living there. He answered that they were visiting.^[5] This answer was true.

5. When their financial difficulties continued and they lost possession of their apartment, Terrance Johnson's brother and Leann Lyons decided that they would stay at the Johnsons' home and that she would work there as a PCA. They stored their possessions in the garage; although they slept occasionally in the home, they slept more often in the Johnsons' van in the driveway. Lyons initiated the process of completing a background study through Summit Health Care. She began working as a PCA for the Johnsons while the background study was being completed.^[6]

6. Shortly before the Fourth of July weekend, the Johnsons and their children went on a camping trip. Terrance Johnson's brother and Leann Lyons accompanied them. After a few days, Leann Lyons decided she wanted to leave, and she took the Johnsons' van without their permission. They called the police to report it as stolen. As a consequence, Leann Lyons was arrested and jailed for several days. The Johnsons are still estranged from Terrance Johnson's brother and Leann Lyons because of this incident.^[7]

7. When Leann Lyons was released from jail in early July 2003, she contacted the Department to report that she and Terrance Johnson's brother had been living in the Johnsons' home and that no background study on them had been completed.

8. When the AIFCS social worker visited the Johnsons' home on July 8, 2003, to investigate the complaint, Terrance Johnson told her that his brother and Leann Lyons had lived there for about one month before the camping trip. The Johnsons believed that the background study being conducted by Summit Health Care was sufficient to comply with the Department's background study requirements with regard to Leann Lyons. The Johnsons were not aware that a background study was required with regard to Terrance Johnson's brother.^[8]

9. The licensing worker issued a correction order for violation of Minn. R. 9545.0080, which provided as follows:

An FFH [family foster home] may not have adult roomers or boarders unrelated to the FFH provider without special permission of the agency. The FFH shall keep the agency informed about all persons living in the home and all others having regular contact with the foster child in the foster home.^[9]

10. On January 23, 2004, the Department issued an Order to Forfeit a Fine in the amount of \$400 (two violations, \$200 each) against the Respondents for failing to initiate background studies on two adults living in the home, in violation of Minn. Stat. §§ 245C.04, subd. 1(d), and 245C.03, subd. 1.^[10]

11. On August 23, 2004, the Department issued a Notice and Order for Hearing. It was not served on Respondents until February 17, 2005.^[11]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services are authorized to consider an appeal of the fine assessed for violating the child care licensing rules, pursuant to Minn. Stat. §§ 245A.07, subd. 3(b), and 14.50.

2. The Respondents received due, proper and timely notice of the basis for the agency's decision, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. License holders must submit completed background study forms to the commissioner before individuals specified in Minn. Stat. § 245C.03, subdivision 1, begin positions allowing direct contact in any licensed program.^[12]

4. Minn. Stat. § 245C.03, subd. 1, requires background studies on individuals age 13 and over living in the household, as well as individuals who, without providing direct contact services, may have unsupervised access to foster children.^[13]

5. The Respondents did not submit a completed background study form to the commissioner when Terrance Johnson's brother and Leann Lyons began living with them, in violation of Minn. Stat. § 245C.04, subd. 1(d).

6. The Respondents mistakenly believed that the background study initiated by Summit Health Care for purposes of employing Leann Lyons as a PCA was sufficient to comply with foster care licensing requirements.

7. The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including failure to submit background studies.^[14] An "occurrence" means each violation identified in the commissioner's fine order.^[15]

8. The Department's assessment of a fine of \$400 complies with Minn. Stat. § 245A.07, subd. 3(b)(4).

Based upon the foregoing Conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the decision of the Commissioner of Human Services to fine the Respondents BE AFFIRMED.

Dated: April 25, 2005

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Tape recorded (1 tape)

MEMORANDUM

The Department has established that the Respondents technically violated Minn. Stat. § 245C.04, subd. 1(d), by relying on Summit Health Care to do the background study on Leann Lyons and by failing to submit completed forms for both adults to the licensing social worker. The record reflects, however, that the Respondents had no intention to deceive anyone about who was living with them and believed they were in compliance. To the Administrative Law Judge, it seems inappropriate to fine the Respondents \$400, considering the Respondents have incurred the substantial expense of adopting and raising severely disabled children. It also seems questionable to view this as two occurrences of a violation, as opposed to one, since these relatives came at the same time and left together. These are matters that are left to the discretion of the Department, however, and the Administrative Law Judge cannot say that the Department lacks the authority to exercise its discretion in this manner.

K.D.S.

^[1] Testimony of Laura Newton.

^[2] *Id.*

^[3] See Minn. Stat. § 256B.0627, subd. 1(i).

^[4] Testimony of Terrance Johnson; Testimony of Laura Newton.

^[5] *Id.*

^[6] Testimony of Terrance Johnson.

^[7] Testimony of Terrance Johnson.

^[8] Testimony Terrance Johnson.

^[9] Ex. 3. This rule was repealed effective December 29, 2003, and replaced with Minn. Rules Chapter 2960.

^[10] Ex. 6.

^[11] Affidavit of Service by Mail of Notice and Order for Hearing, February 17, 2005.

^[12] Minn. Stat. § 245C.04, subd. 1(d).

^[13] Minn. Stat. § 245C.03, subd. 1(2) & (6).

^[14] Minn. Stat. § 245A.07, subd. 3(4).

^[15] *Id.*